IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9853 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GSRTC - Petitioner(s)
Versus
HM TAILOR - Respondent(s)

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Appearance :
MS.JYOTI MEHTA for Petitioner(s) : 1,
None for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 02/07/2007

ORAL JUDGMENT

Ms.Jyoti Mehta, learned counsel for the petitioner; none for the respondent though name of Shri G.K. Rathod is shown on the daily board.

2. The petitioner-GSRTC, being aggrieved by the award dated 8.3.2000 passed by the Industrial Tribunal No.3, Vadodara in Reference IT No. 19 of 1998, is before this Court with a submission that the award made by the learned Industrial Tribunal is patently illegal and is contrary to records.

3. The short facts necessary for disposal of the present writ application are that the respondent was working as Cashier with the present Corporation and was posted at Chhota Udepur Depot of Vadodara Division. On 25.5.94, the respondent was on duty and was possessed a sum of Rs. 1,79,724/-. Instead of putting the amount in safe vault, he kept the money in a steel cupboard. It appears that thereafter in a theft, the said amount was stolen, a complaint was registered with the police, certain investigations were made and some culprits were caught and amount of Rs. 40,500/- could be recovered from one of the miscreant. It is not in dispute before me that thereafter the police had filed charge sheet against the accused

person and a case was going on against the persons from whom recoveries were made and even against some of his colleagues.

4. The Corporation having suffered loss of Rs. 1,79,724/-, lodged First Information Report but after recovery of Rs. 40,500/-, started departmental proceedings for recovery of Rs. 1,39,224/- against the interest of the employee. After giving due opportunity of hearing, final order for recovery was made and the workman was also awarded punishment of stoppage of three yearly increments with cumulative/permanent effect. On an appeal by the workman, vide order dated 17.2.97, order of recovery was maintained but however, punishment of stoppage of three yearly increments was set aside and amount of Rs. 1,39,224/- was ordered to be recovered in 80 equal installments. Being aggrieved by the said order, the workman filed revision which was registered as Reference IT No. 19/98. After recording evidence and hearing the parties, the learned Industrial Tribunal No.3, Vadodara, vide judgment dated 8.3.2000 quashed and set aside

the orders dated 14.12.94 and 17.2.97 and directed that no recovery shall be made from the workman and if any recovery has been made, the amount be refunded back to the workman.

5. Ms. Jyoti Mehta, learned counsel for the petitioner, after taking me through the award submits that the approach of the learned court below was patently illegal and it did not appreciate that because of the lapses committed by the workman, Corporation had suffered monetary losses. It is also submitted that assuming some criminal case is going on against the thief, even then, pendency of such criminal case would not denude the petitioner of its right to recover the loss occasioned to it by misconduct or utter negligence of the respondent-workman. She submitted that simply because, some criminal case was pending against third party, workman cannot avoid final punishment nor can shirk his responsibility.

6. The facts as narrated above, in fact, are undisputed. It is not in dispute that instead of keeping cash in safe vault, the workman kept it

in the steel cupboard. A theft was committed thereafter, sum of Rs. 45,200/- was recovered from one of the thief, rest of the amount undisputedly could not be recovered from anyone. In the criminal cases, there are only two possibilities, one is of the conviction and another of the acquittal. In case, accused is acquitted of the charges, then, the petitioner would not be entitled to recover any money from anyone, in case accused is convicted, then too, discretion would be with the criminal court to impose some fine. In any case, the petitioner would not be entitled to recover money from anybody. If right to recover is to be considered in its true perspective, then, right to recover would also stand accrued in favour of the workman. The workman cannot be allowed to say that though his negligence has caused monetary loss to the master, the master be asked to recover damages from third party.

7. In service contract, master on one side, assures the workman that everything would be paid to the workman in accordance with the contract,

service conditions and labour laws and at the same time, the workman assures the master that he would discharge his duties in accordance with the agreement with full zeal, integrity and as required by the master. A workman also assures the master that he will act with prudence and shall not occasion any loss to the master. In case the master suffers loss because of the ill act of the workman, then, the master would be entitled to recover the same from the workman.

8. The court below was not justified in setting aside the orders passed in the departmental inquiry simply on the ground that some criminal case was pending.

9. The petition deserves to and is accordingly allowed. The orders passed by the subordinate Tribunal are hereby quashed and those made by the departmental authorities are hereby restored. Rule is made absolute accordingly. No costs.

[R.S. GARG, J.]

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